

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

MARK TRIMM,	:	Case No. 3:10-cv-01602
	:	
Plaintiff,	:	Judge James G. Carr
	:	
vs.	:	<u>MEMORANDUM IN OPPOSITION</u>
	:	<u>TO PETITION FOR NO ANSWER</u>
FIFTH THIRD MORTGAGE COMPANY,	:	<u>DEFAULT</u>
	:	
Defendant.	:	

Defendant Fifth Third Mortgage Company ("Fifth Third"), by and through counsel, hereby submits its Memorandum in Opposition to the Petition for No Answer Default ("Petition") (Doc. 6) filed by Plaintiff Mark Trimm ("Trimm"). Fifth Third respectfully requests that this Court deny the Trimm's Petition because Fifth Third did, in fact, timely answer Trimm's Complaint (Doc. 1).

On August 16, 2010, Trimm filed a Petition for No Answer Default alleging that Fifth Third failed to answer Trimm's Complaint within 21 days of service. Trimm's Petition is without merit.

Pursuant to Fed. R. Civ. P. 12(a)(1)(A), a defendant must serve its answer "within 21 days after being served with the summons and complaint." Assuming Trimm's allegation of service is true, Fifth Third met its requirements under Rule 12(a)(1)(A). Trimm purportedly served Fifth Third with process on July 23, 2010, according to "Exhibit A" attached to his Petition. However, there is no return of service filed on the docket in this case.

Assuming that Fifth Third was properly served on July 23, 2010, its deadline to serve its answer was August 13, 2010. Fifth Third filed its Answer (Doc. 5) to the Complaint on August

13, 2010 – 21 days from the date of service. On the same day, it also served its Answer on Trimm by regular U.S. mail. Trimm's only asserted basis for default – that Fifth Third failed to timely answer the Complaint – is incorrect.

For these reasons, Trimm's Petition should be denied.

Respectfully submitted,

Of Counsel:

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was filed with the Court's CM/ECF system and served via regular U.S. Mail, postage prepaid, this 23rd day of August, 2010, upon the following:

Mark Trimm
4603 Skelly Road
Toledo, Ohio 43623

/s/ Stacy A. Cole
Stacy A. Cole (0080075)